IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-400

THE STATE OF GEORGIA, ET AL.,
Petitioners,

versus

HOLMAN FREEMAN,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUMMARY OF ARGUMENT

This Court, for nearly one hundred years, has steadfastly maintained the standards applicable to the concept of "State action" which standards expressly reject Petitioners' argument.

That an agent of a State acts without authority under law (where such agent is clothed with the State's power) is irrelevant in determining whether said action is imputable to the State.

The efforts of the State of Georgia to organically change the concept of "State action" ought not to be entertained by this Court.

ARGUMENT

In 1880, the Supreme Court of the United States defined state action and set the standard applicable and controlling in the subject case. Mr. Justice Strong stated in *Ex Parte, Commonwealth of Virginia,* 100 U.S. 339, at U.S. 346, 25 L.Ed. 676 at 679:

> "We have said that prohibitions of the Fourteenth Amendment are addressed to the State. They are: 'No state shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction equal protection under the laws.' They have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision therefore must mean that no agency of the State, or of the officers or agents by whom its powers are asserted, shall deny to any person within its jurisdiction equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another

> of property, life or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it."

A Georgia Sheriff, M. Claude Screws, in 1944, argued that he, an arresting officer, was not an executive, legislative or judicial officer. He argued that he cannot act for the State unless he is authorized by law. He argued that his authority was well-defined and that when he exceeded his authority, his action could not be said to be sanctioned by the State. The Supreme Court in *Screws v. United States,* 325 U.S. 91, 89 L.Ed. 1495 (1944), struck down Screws' contentions. The Court stated at U.S. 94, L.Ed. 1498, that they granted certiorari in the *Screws* case because of the importance of the issue in the administration of the criminal laws within our system. In *Screws, supra,* Screws was charged with acting under color of law pursuant to his brutal beating and killing of a prisoner. Screws argued that because he exceeded his authority in murdering the victim, that said action could not be imputed to the State. Such weird, irrational logic, which is consistent with the logic of the State's position in the subject case, caused Mr. Justice Rutledge to comment in *Screws,* at U.S. 114, L.Ed. 1509:

"In effect, the position urges it is murder they have done, not deprivation of constitutional right. Strange as the argument is the reason."

Further, *Screws,* at U.S. 95, L.Ed. 1499, struck the note that sets the tone for this case:

"In *Snyder v. Massachusetts,* 291 U.S. 97, at 105, 78 L.Ed. 674 at 677, 54 S.Ct. 330, it was said that due process prevents State action which 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' "

The Court in *Screws, supra,* at U.S. 109, L.Ed. 1507, quoting from *U.S. v. Classic,* 313 U.S. 299, 326, 85 L.Ed. 1368, 1383, stated:

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken under the color of state law."

Further, the Court in *Screws* went on to state at U.S. 110, L.Ed. 1507:

"But the Court in deciding what was state action within the meaning of the Fourteenth Amendment held that it was immaterial that the state officer exceeded the limits of his

authority. '. . . as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with the power to annul or to evade it.' "

In *Cooper v. Aaron,* 358 U.S. 1 at U.S. 16 (1958), 3 L.Ed.2d 5, at 16, the Court stated:

"The controlling legal principles are plain. The command of the Fourteenth Amendment is that no 'State' shall deny to any person within its jurisdiction the equal protection of the laws. 'A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government . . . denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so or the constitutional prohibition has no meaning.' "

In *Monroe v. Pate*, 365 U.S. 167, 5 L.Ed.2d 492, 81 S.Ct. 473 (1961), the Supreme Court, at U.S. 172, L.Ed. 497, rejected the argument that State actions exclude acts of an official or policeman who can show no authority under State law, State custom or State usage to do what he did.

In 1964, the Supreme Court, in *Griffin v. Maryland*, 378 U.S. 130 at U.S. 135, 12 L.Ed.2d 754, 757, 84 S.Ct. 1770, stated:

> "If an individual is possessed of state authority and purports to act under that authority, his action is state action. It is irrelevant that he might have taken the same action had he acted in a purely private capacity or that the particular action which he took was not authorized by state law."

That Fitzgerald (the state agent in question) may have had personal reasons for doing what he did is irrelevant to the issues as to whether or not his actions constitute state action.

In this regard, see *Adicks v. Kress & Co.*, 398 U.S. 144, at 152. 26 L.Ed.2d 142 at 151, 90 S.Ct. 1598:

> "The involvement of a state official in such conspiracy plainly provides the state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights, whether or not the actions of the police were officially authorized or lawful." (Citations omitted.)

The above-cited cases are the genesis and the wellspring from which flowed the evolution of cases leading up to *Brady v. Maryland*, 373 U.S. 83.

Mooney v. Holohan, 294 U.S. 103, 79 L.Ed. 791, 55 S.Ct. 340, was the first significant case in the evolutionary process culminating in *Brady v. Maryland, supra*. The evolution of *Brady* can be traced thusly: *Mooney v. Holohan*, 294 U.S. 103, to *Pyle v. Kansas*, 317 U.S. 213, to *Alcorta v. Texas*, 355 U.S. 28, to *Napue v. Illinois*, 360 U.S. 264, to *Brady v. Maryland*, 373 U.S. 83.

The Supreme Court of the United States in *Mooney v. Holohan*, when initiating the aforementioned evolution, (supra, at U.S. 112, L.Ed. 794) stated:

> ". . . and the action of prosecuting officers on behalf of the State, like that of the administrative offices in the execution of its laws, may constitute state action within the purview of the Fourteenth Amendment. That Amendment governs any action of a state 'whether through its legislature, through its courts, or through its executive or administrative offices.' *Carter v. Texas*, 177 U.S. 442, *Rogers v. Alabama*, 192 U.S. 226, *Chicago B & Q R Co. v. Chicago*, 166 U.S. 226, at 233, 234.

Going to *Chicago B & Q R Co. v. Chicago, supra,* at U.S. 233, we see:

> "But it must be observed that the prohibitions of the Amendment refer to all the instrumentalities of the state, to its legislative, executive and judicial authorities, and, therefore, whoever by virtue of public position under a state government deprives another of any right protected by that amendment against deprivation by the state 'violates the constitutional inhibition; and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state.' This must be so, or, as we have often said, the constitutional prohibition has no meaning, and 'the state has clothed one of its agents with power to annul or evade it.' *Ex Parte Virginia,* 100 U.S. 339, 346, 347."

Thus, *Ex Parte Virginia,* 100 U.S. 339, turns full circle on *Brady v. Maryland,* 373 U.S. 83.

The standards of "State action" enunciated above constitute the bedrock underlying due process application to the States.

CONCLUSION

The Petition for Certiorari ought to be denied.

THEODORE S. WOROZBYT
Attorney for Respondent

CERTIFICATE OF SERVICE

I, Theodore S. Worozbyt, hereby certify that I am a member of the Bar of the Supreme Court of the United States and that I have served copies of Respondent's Brief in Opposition on Counsel for the Petitioners by depositing same in the United States Mail, addressed as follows:

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This the ____ day of November, 1979.

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